

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**GRAND TRUNK WESTERN RAILROAD
INCORPORATED, ET AL.**

Defendants.

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) **CIVIL ACTION NO. 1:05-CV-0672**
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**UNOPPOSED MOTION OF UNITED STATES
TO RESCIND PREMATURE ENTRY OF CONSENT DECREE
AND TO REENTER CONSENT DECREE**

Plaintiff, United States of America, on behalf of the Environmental Protection Agency (“EPA”), respectfully moves the Court: (1) to rescind the premature entry of the Consent Decree lodged in this matter on September 30, 2005, and entered by the Court thereafter on October 5, 2005; and (2) to reenter the Decree. The Decree relates to the Verona Well Field Superfund Site in Battle Creek, Michigan, and resolves claims made by the United States against the Settling Defendants, as provided in the Decree.

On September 30, 2005, the United States filed the Complaint in this matter. Simultaneously, the United States filed a “Notice of Lodging” which informed the Court of the following: (a) the United States was “lodging” a Consent Decree which, upon the

Court's approval, would resolve the United States' claims; (b) the Decree was subject to public comment; the United States intended to publish a notice in the Federal Register soliciting such public comments; and (d) the United States would move the Court to approve the Decree, provided the United States continued to consent to the Decree upon conclusion of the public comment period. The Decree was attached to the Notice of Lodging.

The United States published a notice regarding the Decree in the Federal Register on October 13, 2005. 70 Fed. Reg. 506939. That notice informed the public that comments concerning the Decree could be filed with the Department of Justice ("DOJ") within thirty days thereof. The public comment period ended on November 12, 2005. DOJ received no comments regarding the Decree. The United States continues to believe that the Consent Decree is a fair and reasonable settlement of the claims asserted in this action, that it is consistent with applicable law, and that its entry by this Court and implementation by the parties are in the public interest.

The Court approved the Decree on October 5, 2005, and it was entered that same day. The public comment period had not ended by that time. As a result, and because Defendants' payment obligations under the Decree are keyed to its date of entry, the United States moves, pursuant to Rule 60 of the Federal Rules of Civil Procedure, that the

entry of the Decree on October 5, 2005 be modified or rescinded to reflect entry after the Court's consideration of this Motion. A proposed Order is attached.

Respectfully submitted,

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UNITED STATES OF AMERICA,)	
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Plaintiff,)	
)	CIVIL ACTION NO. 1:05-CV-0672
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GRAND TRUNK WESTERN)	
RAILROAD INCORPORATED, ET AL.)	
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Defendants.)	
)	
)	

**ORDER GRANTING UNOPPOSED MOTION OF UNITED STATES
TO RESCIND PREMATURE ENTRY OF CONSENT DECREE
AND TO REENTER CONSENT DECREE**

This matter having come before the Court upon the motion of the Plaintiff, United States of America, to rescind the premature entry of the Consent Decree by this Court on October 5, 2005, and for reentry of said Decree, the Court having considered the request, there being no opposition by the parties hereto, and for good cause shown, it is:

ORDERED, that the United States' motion is hereby granted; and it is further

ORDERED, that the entry of the Consent Decree on October 5, 2005, is hereby rescinded; and it is further

ORDERED, that the settlement embodied in the Consent Decree is fair, reasonable, and in the public interest, and the Consent Decree is hereby reentered as an order of this Court as of the date hereof.

January 26, 2006
Dated

/s/Gordon J. Quist
United States District Judge